

# Exhibit 15

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIV. GENERAL EQ. PART  
BERGEN COUNTY  
DOCKET NO. C-179-15  
A.D. # \_\_\_\_\_

TAP SYSTEMS, INC.,	)	
	)	
Plaintiff,	)	TRANSCRIPT
	)	OF
vs.	)	MOTION
	)	
CONSUMERS MARKETING	)	
RESEARCH,	)	
	)	
Defendant.	)	

Place: Bergen County Justice Center  
10 Main Street  
Hackensack, New Jersey 07601

Date: April 22, 2016

BEFORE:

HONORABLE ROBERT P. CONTILLO, P.J.Ch.

TRANSCRIPT ORDERED BY:

TIMOTHY FORD, ESQ. (Einhorn, Harris, Ascher,  
Barbarito & Frost, PC)

APPEARANCES:

TIMOTHY J. FORD, ESQ. (Einhorn, Harris, Ascher,  
Barbarito & Frost, PC)  
Attorneys for Plaintiff and Third-Party Defendants

JAY R. McDANIEL, ESQ. (McDaniel Law, PC)  
Attorneys for Defendant Bonnie Nelson and Noslen,  
LLC)

FRANK HOLAHAN, ESQ. (Rivker Radler, LLP)  
Attorney for Defendant Estate of Ginger Nelson

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(Proceeding commenced at 2:33:47 p.m.)

THE COURT: Tap Systems, Inc. versus Consumers Marketing Research, C-179-15, appearances, please.

MR. FORD: Good afternoon, Your Honor, Timothy Ford, Law Firm of Einhorn, Harris, on behalf of the Plaintiff and the Third-Party Defendants.

MR. McDANIEL: Good afternoon, Judge. Jay McDaniel from McDaniel, PC, on behalf of Bonnie Nelson and Noslen, LLC.

MR. HOLAHAN: Good afternoon, Your Honor. On behalf of the Estate of Ginger Nelson, Frank Holahan; Rivker Radler.

THE COURT: All right, welcome, please be seated. This matter is before the Court upon an application for the disqualification of the McDaniel's Firm who has entered an appearance on behalf of Bonnie Nelson and Noslen, LLC.

So I've received a series of submissions from the parties. I'm prepared to hear the oral argument. I just want to make sure I know the status of representation of Ethnic Technologies, LLC, in my case. Does anyone represent that entity in my case?

MR. FORD: No, Your Honor.

THE COURT: Is it anticipated that there will be a default entered against them in this case?

1 MR. HOLAHAN: I believe, Your Honor, the  
2 Court had maybe administratively defaulted. There was  
3 a notice that I think probably was sent quite a number  
4 of months ago by the Court.

5 MR. FORD: You would have received that I  
6 would think. Ethnic Technologies, from my perspective,  
7 and I think the way that we might all look at it is  
8 really a stakeholder. It's typical in a shareholder  
9 oppression case that the Court is very familiar with  
10 where the entity becomes the object of the dueling  
11 owners. And so no appearance has been made in its  
12 behalf. Perhaps the administrative notion is you may  
13 have received a notice from the court that the  
14 complaint as to Ethnic might be dismissed because no  
15 action was taken. And I think Ethnic is really a  
16 stakeholder with no need, as I see it, for separate  
17 independent representation. But someone may have a  
18 different view.

19 MR. McDANIEL: Having -- having had the  
20 opportunity recently to review the file. There is --  
21 there is a dismissal for like a prosecution, and Your  
22 Honor signed that -- signed an order to that effect.

23 THE COURT: All right, so we're not going to  
24 be going to final judgment against Ethnic Technologies,  
25 here; right?

1 MR. FORD: No.

2 (Pause in hearing)

3 THE COURT: What are the claims of the  
4 plaintiff against Bonnie Nelson in this case?

5 MR. FORD: Against Bonnie, Your Honor? Your  
6 Honor, Bonnie Nelson is an owner of Consumers Marketing  
7 Research along with Noslen, LLC, which she is the sole  
8 shareholder of. Bonnie Nelson is also the 50 percent  
9 beneficiary of the Estate of Gabrielle Nelson.

10 So with respect to the claims of Bonnie, Your  
11 Honor, it's in her capacity as a shareholder of  
12 Consumers Marketing Research and Noslen, both of which  
13 own CMR.

14 THE COURT: Well, we don't typically sue the  
15 shareholders of companies that we're suing; right?

16 MR. FORD: Your Honor, I think the other  
17 distinction here is she's not only a shareholder, but  
18 she's a 50 percent beneficiary. So, she, in large part  
19 is CMR. She will, at least, receive the benefit of the  
20 sale of CMR or as -- as Consumers Marketing Research,  
21 and the Estate has taken the position, which we, of  
22 course disagree, the sale potentially of Ethnic  
23 Technologies.

24 THE COURT: Well, what sort of relief do you  
25 want against Bonnie Nelson?

1 MR. FORD: Your Honor, I think that the  
2 relief is similar to the relief that's sought against  
3 CMR. And quite frankly, Your Honor --

4 THE COURT: Tell me.

5 MR. FORD: -- discovery is premature, at this  
6 point.

7 THE COURT: Well, it's not premature to tell  
8 me what relief you want against Bonnie Nelson.

9 MR. FORD: Dissolution, Your Honor.  
10 Dissolution of an entity with which she has an  
11 ownership interest. They're disputing the dissolution  
12 of that entity. Certainly, for at least discovery  
13 purposes, we believe that Bonnie Nelson and Noslen, LLC  
14 are -- are necessary parties to the litigation.

15 They have an interest in CMR, which our  
16 position is pursuant to the operating agreement that  
17 they're not going to purchase or bought out by Tap.  
18 Pursuant to the operating agreement, the 2000 operating  
19 agreement the assets and liabilities of Ethnic  
20 Technologies, the joint LLC are to be split.

21 So with that regard, Your Honor, I certainly  
22 think that it's something that is not only for  
23 discovery purposes relevant to have those two parties  
24 in the matter. But she's inextricably intertwined in  
25 all of this. You know, there is another matter pending

1 before Judge Toskos.

2 THE COURT: If she didn't file a responsive  
3 pleading, and you've entered a default, and then you  
4 want a default judgment against Bonnie Nelson. What --  
5 what would I be ordering Bonnie Nelson to do?

6 MR. FORD: I think, Your Honor, you'd be  
7 ordering a dissolution.

8 THE COURT: Oh.

9 MR. FORD: But I don't -- we would be  
10 proceeding for judgment by default until trial in this  
11 matter. I don't think that, for example, if there's no  
12 appearance made on her behalf, you know, that we would  
13 default her, of course. But we wouldn't proceed to  
14 final judgment. I think that would need to be  
15 determined at the time of trial. A proof hearing would  
16 not be sufficient.

17 And I think also to, you know, foreclose her  
18 rights to Ethnic Technologies, it's certainly important  
19 for her to be a party.

20 Your Honor, there's issues that are pled in  
21 the complaint. Bonnie Nelson was a -- it was a  
22 purported sister, but apparently a cousin of Ginger  
23 Nelson. Bonnie Nelson has had some level of  
24 involvement. She's certainly -- there was an *inter*  
25 vivos transfer of the interest of CMR.



1           There's also issues that go back to 6 to 12  
2 months ago, Your Honor, where Bonnie Nelson was looking  
3 to sell, you know, she was marketing CMR and/or Ethnic  
4 Technologies. She had inappropriately shared the  
5 general ledger. Judge Toskos had entered an order  
6 precluding her from doing so, requiring her to return  
7 it and destroying any copies of the general ledger.

8           So I think the position taken by Mr. McDaniel  
9 that Bonnie Nelson and Noslen are -- they're  
10 inappropriate parties in this litigation, I think is  
11 disingenuous. And I don't think that that's the case.

12           THE COURT: Okay.

13           MR. McDANIEL: May I, Your Honor, on that  
14 issue?

15           THE COURT: Mmm-hmm.

16           MR. McDANIEL: With all due respect to my  
17 adversary, he didn't answer your question. You  
18 couldn't enter an order against her today, because the  
19 relief sought is entirely speculative.

20           We understand the principles of corporate  
21 governance. The corporate governance is that Bonnie  
22 Nelson is a shareholder. She doesn't have any inherent  
23 right to participate in litigation involving a company  
24 in which -- a limited liability company in which she  
25 happens to be a nominal shareholder of one of members.

1           She's not involved in management. She's not  
2 an officer. She's not a director; she's not a member  
3 of the litigation control. She doesn't have any role  
4 in management of the company.

5           She received this stock of *inter vivos*  
6 transfer. And the fact of the matter is, is it really  
7 demonstrates what, I would respectfully suggest that  
8 our litigation tactics are beyond the pale of what's  
9 normally found.

10           You're right, you don't sue the shareholders,  
11 and you don't sue beneficiaries of an estate just  
12 because they might some day get some money. There's  
13 all kinds -- there's law on the book about that. If  
14 there was a distribution made to -- and that's the only  
15 -- that's the only possible claim that I can see, is  
16 that there seems to an assertion that if there was a  
17 distribution, and it was this carved back provision  
18 some day was actually effective and she may have gotten  
19 money that she wouldn't have otherwise been entitled  
20 to.

21           We don't do that with shareholders. There's  
22 the law that says that, you know, if you make a  
23 distribution to shareholders and you're insolvent at  
24 the time, or it would make you insolvent, than you can  
25 get it. But there's all kinds of remedies about that.

1           When -- what -- and I will suggest to the  
2 Court, you may not have had the benefit of looking at  
3 the discovery in this case, but it's -- I got a hundred  
4 interrogatories of which maybe five, ten have something  
5 to do with the case. The rest of it, what did you do  
6 with cars, and what did you get, and what did the other  
7 shareholders get. It just -- it doesn't make any  
8 sense.

9           And my -- my position on this as it relates  
10 to her, she doesn't belong in the case. If she is in  
11 the case, she's a bit player. If she has tried to  
12 assert her rights in some respect with regard to the  
13 dissolution of the company, she would have no grounds  
14 to do that. And they have -- the Estate has a lawyer,  
15 a very competent lawyer, that represents the interest  
16 of the company.

17           She has an unliquidated contingent interest  
18 in whatever the proceeds may be under -- under a  
19 document that was -- that was settled in another case.  
20 There was an issue with some documents that she  
21 received. There was an action that was filed. I  
22 actually had occasion to look at that. There was a  
23 consent to return the documents. It never went to a  
24 hearing -- I don't even think it got to the return  
25 date. She gave back the stuff. She signed an order

1 that she won't give it to anybody.

2 You know, I'll talk about the other issues  
3 about, you know, whether or not there's actually any  
4 body in this case that I have duty to. But I just want  
5 to be clear about this that I think that the first  
6 fundamental issue here is why is this woman being  
7 tortured in this way? She's got to pay her own legal  
8 fees. She doesn't have the benefit of the Estate, she  
9 doesn't have anybody else. You know she's out-of-  
10 pocket a lot of money, and she does not -- nothing that  
11 happens with her will effect the outcome of the case.

12 THE COURT: If she's not in the case, or if  
13 she wasn't in the case, is she privy to the Estate  
14 documents that are made up, or is she privy to the  
15 documents that are made available to the Estate?

16 MR. McDANIEL: No.

17 THE COURT: Why not?

18 MR. McDANIEL: I mean she's -- she's a  
19 beneficiary under the Estate.

20 THE COURT: How much?

21 MR. McDANIEL: Well, she gets 50 -- she gets  
22 the cars. Ms. Nelson left a number of personality and  
23 then there's the company.

24 THE COURT: Half of the Estate she gets?

25 MR. McDANIEL: Well, it's a little bit more

1 complicated than that. There was some personality, and  
2 an apartment, other things that got divided up. And  
3 then the deal was we'll sell CMR. And when we sell  
4 CMR, you'll get the distributions, you'll get that  
5 distributed. So she has that, but I mean --

6 THE COURT: But why would a beneficiary be  
7 immune from or be precluded from knowing information  
8 that was made available to the Estate of which she is a  
9 50 percent beneficiary? How could you not share that  
10 with her, if she wanted to see it?

11 MR. MCDANIEL: I think she's entitled to -- I  
12 don't do Estate Administration, so I can't really  
13 answer that completely. I can tell you that to date  
14 she's received her own accountings. She is not privy  
15 to the litigation discussions. There was a  
16 stakeholders meeting that was awarded in this case.  
17 She wasn't invited to it.

18 You know, I think that my experience has been  
19 that there are some general discussions about where is  
20 the Estate now. I don't think that she's entitled to  
21 -- I don't think there's -- frankly, others would know  
22 better than me. I did examine the issue. As a  
23 beneficiary you're entitled to -- beneficiary for cash,  
24 because it's important to recognize, at least at this  
25 juncture, she's -- there's been no distribution of

1 stock.

2 Is a beneficiary of cash entitled to know  
3 privileged information about the company that's in the  
4 Estate, if that's in litigation? I -- I --

5 THE COURT: Well, there seems, what I'm  
6 trying to get to is the concern that was raised first  
7 by Mr. Bartner (phonetic), then reiterated by Mr. Ford  
8 with respect to the sharing of confidential  
9 information, that she would otherwise not have  
10 available to her.

11 MR. McDANIEL: I don't think she's -- I  
12 really don't think she's got a right to it. I  
13 certainly --

14 THE COURT: Well, she doesn't have a right  
15 under the -- as a nominal shareholder.

16 MR. McDANIEL: No, absolutely not. The  
17 question of whether she has a right as a -- as a  
18 beneficiary of the Estate --

19 THE COURT: I presume she has that right  
20 whether she's in the case or out of the case.

21 MR. McDANIEL: That's true, if she's got it.  
22 I mean --

23 MR. FORD: Yeah, one thought, we -- Your  
24 Honor did enter very recently a confidentiality order  
25 and stipulation. That it does address whether or not

1 information, confidential information can be provided  
2 and to who. And there is a preclusion on providing  
3 information to the beneficiaries of the Estate.

4 MR. McDANIEL: I -- I --

5 MR. FORD: And then I believe, I don't know  
6 if Mr. McDaniel signed that order or not, but you were  
7 here.

8 MR. McDANIEL: When was it entered?

9 MR. FORD: When it was -- when it was --

10 MR. McDANIEL: I had no opposition to it.

11 MR. FORD: Okay, yeah. Your Honor called it  
12 about two weeks ago, and entered it.

13 MR. McDANIEL: Judge, let me be clear. This  
14 -- I have no interest in trying to give access to  
15 another attorney. I'm not -- I don't practice that  
16 way. This is not about my trying to get access to  
17 privileged information or whatever. She has none now.  
18 I don't see that, if there was any given in the future,  
19 it would be voluntary. It wouldn't be because --  
20 because there's some compulsion on it. And I mean  
21 counsel for the Estate can address the issue of whether  
22 or not she's received anything.

23 I mean Tom Howard who put in the  
24 certification in this case. I've litigated with him  
25 for a decade now. He's a very competent lawyer. He's

1 not going to be compelled to turn over his files to me,  
2 without a Court Order. And I'm not -- that's not what  
3 this is about.

4 I mean the goal here, at least for my client,  
5 is to get in an appearance, make my motion to get out  
6 of the case, and then go on my way. She engaged me  
7 because of the background that I have with some of the  
8 parties. I think that if you look at -- you know, I  
9 wouldn't have any problem at all entering into some of  
10 sort of an agreement, or having the Court fashion an  
11 order that would preclude her from getting access to  
12 privileged information. I think that's only fair.  
13 That's not what this is about.

14 THE COURT: All right, we've gone afar  
15 afield of my initial question to plaintiff's counsel.  
16 So let me hear from plaintiff's counsel, if he wants to  
17 supplement his argument.

18 MR. FORD: Your Honor, I don't really want to  
19 take up much more of the Court's time. I mean that I  
20 know that the parties have certainly briefed this and  
21 lettered this sufficiently for Your Honor.

22 Your Honor, I think in this circumstance  
23 there's a clear concurrent conflict of interest. Not  
24 only for one reason. Not only because Mr. McDaniel  
25 represents Peter Brownstein in the Federal Court



1 Litigation. But because of Peter Brownstein  
2 though Mr. McDaniel the representation in various other  
3 facets.

4 Your Honor, going back to 2008 or 2009 Mr.  
5 McDaniel was purportedly representing Tap. Certainly,  
6 preparing resolutions for Tap.

7 THE COURT: What was he representing --  
8 you're talking in the lawsuit?

9 MR. FORD: No, Your Honor, even prior to  
10 that. Pursuant to --

11 THE COURT: But the lawsuit was a derivative  
12 action; right.

13 MR. FORD: The lawsuit, yes, Your Honor.  
14 Prior to that there was meetings with Mr. McDaniel,  
15 Tina Lindsay, as is set forth in her certification, and  
16 Peter Brownstein. He prepared resolutions for Tap. He  
17 called meetings for Tap. And then after that, he filed  
18 litigation that clearly states for Peter Brownstein  
19 individually and on behalf of Tap.

20 Ultimately, there's no dispute that Tap and  
21 Mr. Wilhoit, or is that Tina Lindsay, at that point,  
22 said, no, through Mr. Howard. You don't represent Tap  
23 here. And -- and ultimately there was a further  
24 distinction that was drawn.

25 Well, Your Honor in that matter, Mr. McDaniel

1 had filed a lawsuit against Zack Wilhoit, Tina Lindsay,  
2 Ginger Nelson (Bonnie Nelson's cousin or purported  
3 sister, whatever she may be). In addition, Your Honor,  
4 that matter proceeded, they were adverse. There was no  
5 dispute as the adversity as is set forth in Tom  
6 Howard's certification.

7 And now, Mr. McDaniel is representing Peter  
8 Brownstein in a Federal Court litigation. He is suing  
9 Ethnic Technologies and Tina Lindsay. As the Court  
10 knows Ethnic Technologies is owned by Tap, by CMR, and  
11 we know, or at least it's purported that two of the  
12 benefi -- or excuse me, or two of the shareholders of  
13 CMR, Your Honor, are Bonnie Nelson and Noslen, LLC.

14 Pursuant to RPC 1.7, Your Honor, it doesn't  
15 get more clear.

16 THE COURT: If he gets a recovery in the  
17 Federal action, and let's say Tina Lindsay is bankrupt.  
18 Who is he collecting as?

19 MR. FORD: If he gets a recovery, I mean I  
20 would presume in the Federal litigation he's suing not  
21 only Tina Lindsay, but it's Ethnic Technologies.

22 THE COURT: Those are the two defendants that  
23 I saw.

24 MR. FORD: So if Tina Lindsay were bankrupt,  
25 I presume that he's going after Ethnic Technologies.

1 THE COURT: And who owns Ethnic Technologies?

2 MR. FORD: Tap, CMR, and CMR's two  
3 shareholders are Bonnie Nelson and Noslen, represented  
4 by Mr. McDaniel.

5 THE COURT: I mean that's where I see  
6 potential conflict, actually.

7 MR. FORD: And Your Honor, I don't see that  
8 -- there's no way to waive it, the fact that there in  
9 different tribunals doesn't matter. Because RPC 1.7b  
10 provides for if you're in a tribunal, if there is a --

11 THE COURT: He's suing to recover as against  
12 an entity in which the party that he now wants to  
13 represent in my case, is a shareholder.

14 MR. FORD: Yes, Your Honor.

15 THE COURT: So that's --

16 MR. McDANIEL: If I may? Here's -- here's  
17 the issue that comes up, and you know maybe --

18 THE COURT: Do you want to waive any recovery  
19 against --

20 MR. McDANIEL: I don't think I got a legal  
21 right to it. I mean, are they going to estopped when I  
22 come back, and when we come back for an accounting, and  
23 I say I want to recover against Ethnic Technologies,  
24 they'll scream bloody murder.

25 THE COURT: But if you get a recovery in

1 Federal Court and Tina Lindsay goes bankrupt; where are  
2 you going to get your recovery?

3 MR. McDANIEL: I take -- I take the  
4 copyright.

5 THE COURT: You're not going to get a  
6 recovery against Ethnic Technologies?

7 MR. McDANIEL: I don't see how?

8 THE COURT: Why -- they're a defendant in the  
9 case.

10 MR. McDANIEL: They were -- they were named  
11 as a defendant initially. The case was somewhat  
12 different when it was filed. And there was an issue  
13 with some other registrations, and it's been up to the  
14 Third Circuit, and the Third Circuit's kind of defined  
15 it.

16 I mean --

17 THE COURT: So --

18 MR. McDANIEL: -- I hear what you're saying,  
19 but --

20 THE COURT: -- I haven't study, I actually  
21 did reviewed it, but I haven't studied the pleadings.  
22 You're suing in Federal Court a company that is co-  
23 owned by entities in which the people you now seek to  
24 represent have interest. Admittedly not big interest,  
25 but interest. That doesn't seem -- on its face doesn't

1       seem right.

2               MR. McDANIEL: The issue -- the issue is  
3       copyrights like a joint tenancy in an apartment  
4       building.

5               THE COURT: Copyrights like UCC, every time I  
6       hear it, my eyes glaze over. Meaning I don't  
7       understand it.

8               MR. McDANIEL: Well, let me take a shot, if I  
9       could for just a second.

10              THE COURT: Mmm-hmm.

11              MR. McDANIEL: All right? It's -- copywrites  
12       is properties, personal property, and the co-authors --  
13       this is a co-authorship. Co-authors have an undivided  
14       interest in the whole.

15              THE COURT: I've read -- I've read your  
16       papers.

17              MR. McDANIEL: Okay. So -- so, but the point  
18       is that --

19              THE COURT: Me, my comment was simply I don't  
20       know in terms of the relief you're seeking. What is --  
21       you get a default judgment in the Federal case, what's  
22       the relief you get?

23              MR. McDANIEL: I get an order that Tina  
24       Lindsay has to pay me half of everything that she's  
25       received.

1 THE COURT: Assume she's bankrupt?

2 MR. McDANIEL: Then I get to pursue, she owns  
3 stock. I have my regular creditors running these. I  
4 take her stock in Tap, or I get an order from Chancery  
5 Judge compelling a receiver to conduct an auction of  
6 her -- of the copywrite and to pay me the balance.

7 THE COURT: So your waiving any right to  
8 collect anything against Ethnic Technologies, LLC in  
9 the Federal action?

10 MR. McDANIEL: Ethnic could be on the hook  
11 for attorneys fees, and I mean, and honestly --

12 THE COURT: Where -- who's going to pay  
13 those?

14 MR. McDANIEL: Well, that's an issue of --  
15 that they're litigating. Here's one of the problems  
16 that I have with this.

17 THE COURT: That's the end of it. Isn't that  
18 the end of it there?

19 MR. McDANIEL: I don't think so, because the  
20 -- if you have to --

21 THE COURT: Well, it trickles down to the  
22 shareholders if their company is going to be on the  
23 hook for the attorneys fees in that case.

24 MR. McDANIEL: I have a couple of points that  
25 I would just like to make.

1 THE COURT: So you'll be getting the  
2 attorneys fees both ways. From the minority  
3 shareholders that you're representing, and also you'll  
4 be getting them to pay your attorneys fees in the  
5 Federal action.

6 MR. McDANIEL: Well, there's -- one of the  
7 issues in this case. The first thing I would say is  
8 that, you know, this notion of who represents Ethnic  
9 and -- and you know, if we're going to use the idea  
10 that derivative plaintiffs represent the company that  
11 they're bringing a derivative claim on them, then the  
12 Einhorn Harris case --

13 THE COURT: I'm passed that -- I'm passed  
14 that issue.

15 MR. McDANIEL: Okay.

16 THE COURT: I'm here with you suing and  
17 seeking recovery in the Federal action against the  
18 company in which your present would be clients have an  
19 interest. You can't do that.

20 MR. McDANIEL: So if I represent -- let's say  
21 I had a client who owned shares in PSE&G; right? And  
22 --

23 THE COURT: And you were suing to bring PSE&G  
24 to its knees, break it up in a million pieces. Have it  
25 divest --

1 MR. McDANIEL: And my client owns 100 shares.

2 THE COURT: Right.

3 MR. McDANIEL: I'm out?

4 THE COURT: You're trying to diminish your  
5 clients shares. Yes, you're out, yeah.

6 But that's not this case.

7 MR. McDANIEL: So in any amount?

8 THE COURT: I think so, I'm afraid.

9 MR. McDANIEL: I'm just, you know, if I'm  
10 out, then the one thing I would say is that I think  
11 they're pushing me out on the idea that -- of my  
12 recovery, and you know. If I'm out, I think Tom Howard  
13 is also out of the case.

14 THE COURT: I don't know. I'm not here to  
15 say that. And I'm not trying --

16 MR. McDANIEL: But I mean -- there's --  
17 there's going to be -- There's a lot of problem.

18 THE COURT: I'm not trying to be -- I'm not  
19 trying to deprive anybody the right to make a living or  
20 anything else.

21 MR. McDANIEL: Yeah.

22 THE COURT: You know, it's a substantial  
23 application. But you're suing in Federal Court and  
24 among the relief you are seeking against this, against  
25 Ethnic Technologies in which there are two owners, one



1 of which your client has an interest in. It's not --  
2 it's not so attenuated that -- just don't --

3 MR. McDANIEL: It's a 3 percent interest on a  
4 claim that would be -- and right now it's about  
5 \$250,000, so you're talking about six grand, right,  
6 seven, eight grand. And its, you know, if it exists,  
7 it's a very nominal interest. And I did cite some  
8 cases that said there's a kind of a threshold.

9 THE COURT: Well, you may be -- there may be  
10 all kinds of relief you may want against Ethnic  
11 Technologies beside just a money award. You may want  
12 -- you may want to seize assets that Ethnic  
13 Technologies has an interest in to satisfy Mr.  
14 Brownstein.

15 MR. McDANIEL: I don't think I -- I just  
16 don't see how I could. I would -- I would --

17 THE COURT: It's too incestuous. I mean on  
18 its face it just doesn't --

19 MR. McDANIEL: I mean I would waive, you  
20 know, and I'll be -- well, I'm not here to try, I'm  
21 very straightforward on these things. The -- the  
22 attorneys fees in the only thing that there's a  
23 potential claim for.

24 Part of the issue is that it's a very -- it  
25 is a relatively remote occurrence a conflict would

1 arise in the future. Is it waivable, is the other  
2 thing.

3 THE COURT: It's concurrent, I don't think  
4 you can a waive a concurrent interest.

5 MR. McDANIEL: You don't think it's waivable.

6 THE COURT: Don't know. I was tempted to  
7 say, file your motion, just to get that issue tested as  
8 to whether they even belong in the case. And then if  
9 you were out of the case, the issue would be moot. And  
10 if you were in the case, then I would have to address  
11 the conflict.

12 But on the surface of it, on the face of it,  
13 there's an actual concurrent dispute. Your interest  
14 are adverse to the interest that your client has in  
15 Ethnic Technologies. Your Federal Court interest is  
16 adverse, it's live, it's unwavering. That's my ruling.

17 MR. McDANIEL: All right, I respectfully  
18 accept the Court's ruling. Obviously, I disagree, but  
19 I understand.

20 THE COURT: You can --

21 MR. McDANIEL: Thank you, Judge.

22 THE COURT: -- that's why we have the  
23 Appellate Division.

24 MR. McDANIEL: Yes.

25 THE COURT: Among other reasons.

1 MR. FORD: Your Honor, there are several  
2 other matters that are of pressing need. Several of  
3 which were raised in correspondence back and forth to  
4 the Court with respect to a couple of issues.

5 THE COURT: Well, don't argue them, just  
6 itemize them.

7 MR. FORD: Your Honor, the items are CMR and  
8 the Estates responses to discovery. I sent a letter on  
9 March --

10 THE COURT: All right, we have that issue,  
11 and we have the discovery issue here.

12 MR. FORD: We have the sanctions issue, Your  
13 Honor. There is an issue where Mr. Holahan we filed  
14 our -- excuse me, we served a Third Party with the  
15 subpoena. Mr. Holahan has requested leave to file a  
16 motion to quash the subpoena.

17 THE COURT: Did I give that leave?

18 MR. HOLAHAN: You have not. You have not  
19 addressed it, Your Honor.

20 MR. FORD: There is an issue, Your Honor,  
21 with respect to -- and I assume counsel can work this  
22 out, we had noticed Peggy Mead (phonetic) the  
23 administrator CTA, her deposition. Counsel for the  
24 Estate was unwilling to produce her.

25 So there are several issues that every time

1 we try to make progress, Your Honor, we get bogged  
2 down. We send a subpoena for a deposition, for  
3 documents. A Motion to Quash.

4 THE COURT: Well, they're allowed to file a  
5 Motion to Quash, or they will be. But do you want me  
6 to address these matters today, right now, with  
7 counsel?

8 MR. FORD: Yes, Your Honor.

9 MR. McDANIEL: Actually, I should, I suppose  
10 I'm excused, at this point?

11 THE COURT: I haven't signed the order yet.

12 MR. McDANIEL: Okay.

13 THE COURT: You can be thought, if you want  
14 to be?

15 MR. McDANIEL: I don't want to hear anything  
16 that's --

17 THE COURT: All right, let me talk about the  
18 fee -- on the fee thing. Until I get my hands on  
19 whether or not there's been a good faith response to  
20 the discovery demands, I can't decide whether or not,  
21 or when, or what to do about the sanctions that are  
22 being imposed.

23 So if in fact there's been a good faith  
24 effort to provide the discovery that's available by Ms.  
25 Nelson, you know, I'm going scale back the penalties, I

1 mean certainly to the day that they were produced and  
2 maybe even before that. So I can't really resolve that  
3 question today. I can't have a debate about whether  
4 they were adequate or inadequate. If they are  
5 inadequate, then I'll -- we're going to have to deal  
6 with that. We're going to have to deal with that.

7 MR. FORD: Your Honor, I would submit that  
8 this issue has been pending before the Court for a  
9 substantial amount of time. The briefs, most recently,  
10 while she was represented by counsel, did address this  
11 issue.

12 The position of the plaintiff and third-party  
13 defendants is this is just another opportunity to kick  
14 the can down the road, to delay the matter. This  
15 matter, Your Honor, is scheduled for trial in  
16 September. Now we all know that we can't even get off  
17 the ground, despite our best efforts to move this case.  
18 Because every try to take one step forward, another  
19 issue is interjected. And we'll never, discovery will  
20 never end in this case, Your Honor.

21 THE COURT: I've never had such a case in my  
22 life. I've never had a case go a day after the  
23 discovery end date, as a matter of fact.

24 MR. FORD: Your Honor, we're past the  
25 discovery end date in this matter.

1 THE COURT: Well, there you go. So I'm not  
2 going to do anything with respect to the now  
3 lawyerless, noncompliant, self represented party. I'll  
4 give you leave to file whatever application you want,  
5 vis-a-vis, Bonnie Nelson and Noslen, Inc, on the  
6 question of the noncompliance with the discovery  
7 obligation.

8 MR. HOLAHAN: Okay.

9 THE COURT: Next?

10 MR. FORD: The discovery responses by CMR and  
11 the Estate.

12 THE COURT: Have you given them a deficiency  
13 letter?

14 MR. FORD: We sent it March 14th and March  
15 16th, Your Honor.

16 THE COURT: And have you got a response?

17 MR. FORD: Mr. Holahan hinted that he would  
18 not respond. He took the position that they deemed  
19 their responses to be sufficient. Mr. Oliver has not  
20 responded on behalf of CMR.

21 THE COURT: What do you want me to do?

22 MR. FORD: Your Honor, I would -- I would  
23 like -- I mean, obviously, I'm not going to -- the  
24 Court is not going to enter draconian relief of  
25 striking their answer and counterclaim. But I think a

1 reasonable measure, Your Honor, is to provide a  
2 deadline, a hard and fast deadline to, at least to  
3 start by giving a good faith response to our letter,  
4 which I think is something that we're entitled to.

5 THE COURT: Have I appointed a Discovery  
6 Master in this case?

7 MR. FORD: No, Your Honor.

8 MR. HOLAHAN: No. We welcomed it, Your  
9 Honor. But your Court -- but the Court has not done  
10 so.

11 THE COURT: Should I?

12 MR. FORD: Your Honor, given --

13 THE COURT: Because otherwise I'm going to do  
14 what I don't do, which is allow a discovery -- a Motion  
15 to Dismiss their pleadings for inadequate discovery,  
16 let them respond, and you reply. And then I'll come in  
17 and see whether or not they've met their obligations to  
18 provide responses to discovery.

19 MR. FORD: We have no objection to a  
20 Discovery Master, Your Honor.

21 THE COURT: Joe Castiglia. Do you know him?

22 MR. FORD: Joe Castiglia?

23 MR. HOLAHAN: Yes, I think he would be --

24 THE COURT: He's a local fellow, he's quite  
25 good. Do a due diligence Joseph Castiglia, C-A-S-T-I-

1 G-L-I-A. He's across the street here. I think -- I  
2 mean I don't do Discovery Masters, now I've done two in  
3 one week, so I must be getting old. But he's quite  
4 good.

5 So I'll, you submit an order Discovery Master  
6 -- No, I'll tell you what, I'll do my own order. Do I  
7 need the consent of the party that's not here?

8 MR. HOLAHAN: I'm sure, I don't -- I can  
9 speak for CMR, Your Honor, the Estate, I'm sure that  
10 CMR would consent.

11 THE COURT: Okay. So that will get done  
12 immediately.

13 MR. FORD: Thank you, Your Honor.

14 THE COURT: Do you want file a -- I'm sorry,  
15 you're done or not done?

16 MR. FORD: Your Honor, I guess the Discovery  
17 Master will handle the issue with respect to the  
18 depositions, the subpoena of Richard Lane.

19 Just give me one second, Your Honor, I want  
20 to be sure.

21 MR. McDANIEL: Will the Master handle the  
22 issue of my client as well, or my former client, or  
23 soon to be former client?

24 THE COURT: Well, I think she's in a little  
25 different position. Right now she's under the gun of



1 the Court's Order, so she's going to have to get before  
2 me proof that she's provided good discovery. I haven't  
3 seen it, so.

4 MR. McDANIEL: Would Your Honor like to see  
5 it?

6 THE COURT: Would I like to see it?

7 MR. McDANIEL: I'll send it in. It's 900  
8 pages?

9 THE COURT: Do you want to submit that issue  
10 to the Discovery Master, whether she's responded in  
11 good faith in her discovery demands?

12 MR. FORD: Your Honor, would I be able to  
13 give that some thought over the weekend?

14 THE COURT: No, not that weekend. It's only  
15 five after three. Really --

16 MR. FORD: Your Honor, I have no problem with  
17 the Discovery Master.

18 THE COURT: Let's do it that way, all of it.  
19 Good, done.

20 MR. FORD: It's fine. Your Honor, there's  
21 just one other issue, I believe, in our application we  
22 requested that the Court require that counsel for CMR  
23 and the Estate sign certifications, much like was done  
24 with Judge Toskos in the matter of the general ledger.  
25 To determine what, if any, confidential or privileged

1 information has been shared with Mr. McDaniel or his  
2 clients.

3 THE COURT: Well, I'm assuming they're going  
4 to say none. Why do we think that there was some?

5 MR. FORD: Your Honor, we believe that in the  
6 general ledger that was shared either with Bonnie  
7 Nelson or the general ledger that was provided on a  
8 thumb drive to the Estate and CMR, at the stakeholders  
9 meeting in early March. There's information that Mr.  
10 McDaniel used in his application with respect to the  
11 compensation of an employee at Ethnic Technologies.

12 The only way they would have had access to  
13 this information is through the general ledger.  
14 There's no other way. Any other ways would have been  
15 wholly unlawful.

16 So our position is CMR and the Estate did not  
17 object in their application to signing a certification.  
18 And there is a real concern considering -- Judge Toskos  
19 already entered an order, it was not a consent order,  
20 with respect to Bonnie Nelson compelling her to return  
21 the general order. Now we have another instance where  
22 Bonnie Nelson either used the information from the  
23 general ledger she received last year, or when we  
24 produced the general ledger to --

25 THE COURT: I'm not going to order a

1 certification. You can do discovery on that issue.

2 I'm not ordering a certification.

3 MR. FORD: Okay.

4 THE COURT: I'm not ordering the  
5 certification.

6 MR. McDANIEL: Are we on the record?

7 THE COURT: Yes.

8 MR. McDANIEL: I received no confidential  
9 information from my client, Judge. If I did, I would  
10 tear it up and send it back in pieces, I don't practice  
11 that way.

12 THE COURT: Motion to Quash, what do you want  
13 to quash?

14 MR. HOLAHAN: A subpoena served on Richard  
15 Lane and that is, I thought we just decided was going  
16 to be determined by or addressed by Mr. Castiglia.

17 THE COURT: Has, so you didn't get leave of  
18 court from me to file a motion?

19 MR. HOLAHAN: No, I wrote --

20 THE COURT: Perfect, don't file it.

21 MR. HOLAHAN: That's what I thought.

22 THE COURT: Thank you, fellows.

23 MR. FORD: Thank you, Your Honor.

24 MR. HOLAHAN: Thank you.

25 MR. McDANIEL: Thank you, Judge, have a nice

1 weekend.

2 (Proceeding concluded at 3:08:33 p.m.)

3 CERTIFICATION

4  
5 I, Patricia Wtulich, the assigned transcriber, do  
6 hereby certify the foregoing transcript of proceedings  
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